

## AIR TRANSPORT SERVICES

*Exchange of notes at Madrid December 2, 1944, with text of agreement and related notes*

*Entered into force December 2, 1944*

*Amended by agreements of December 21, 1945, and January 15, 1946;<sup>1</sup> February 21 and March 12, 1946;<sup>2</sup> July 4, 1950;<sup>3</sup> and July 21, 1954<sup>4</sup>*

*Supplemented by agreement of April 30, 1971<sup>5</sup>*

58 Stat. 1473; Executive Agreement Series 432

*The American Ambassador to the Minister of Foreign Affairs*

EMBASSY OF THE  
UNITED STATES OF AMERICA  
MADRID, *December 2, 1944*

No. 3482

EXCELLENCY:

I have the honor to refer to negotiations which have recently taken place between the Government of the United States of America and the Government of Spain for the conclusion of a reciprocal air transport agreement.

It is my understanding that it has been agreed in the course of the negotiations now concluded that this Agreement shall be as follows:

### AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND SPAIN RELATING TO THE OPERATION OF INTERNATIONAL AIR TRANSPORT SERVICES

#### ARTICLE I<sup>6</sup>

(a) 1. Air carriers of the United States are permitted to operate, pick up and discharge passengers, cargo and mail in international traffic at the fol-

<sup>1</sup> TIAS 2131, *post*, p. 700.

<sup>2</sup> TIAS 2132, *post*, p. 703.

<sup>3</sup> 1 UST 732; TIAS 2140.

<sup>4</sup> 5 UST 1483; TIAS 3022.

<sup>5</sup> 22 UST 578; TIAS 7105.

<sup>6</sup> For amendments of art. I, see agreements of Dec. '21, 1945, and Jan. 15, 1946 (TIAS 2131, *post*, p. 700); Feb. 21 and Mar. 12, 1946 (TIAS 2132, *post*, p. 703); July 4, 1950 (1 UST 732; TIAS 2140); and July 21, 1954 (5 UST 1483; TIAS 3022).

lowing points within the territory under the jurisdiction of the Spanish Government, in operations over the following routes:

*Route 1*

A route from New York through Lisbon to Madrid and Barcelona, proceeding therefrom to Marseilles, and points beyond, return being made over the same route.

*Route 2*

A route from New York through Lisbon to Madrid, proceeding therefrom to Algiers, and points beyond, return being made over the same route.

*Route 3*

A route from New York or Miami through South America, West Africa, Villa-Cisneros, and French Morocco, to Seville, Madrid, and Barcelona, proceeding therefrom to Paris and points beyond, return being made over the same route.

2. Spanish air carriers will be permitted to operate and pick up and discharge passengers, cargo and mail in international traffic at such point or points within the territory under the jurisdiction of the United States of America as will provide a route or routes of similar aviation importance to those granted to the United States and set out in this Agreement. The specific point or points of access shall be determined by negotiation between Spain and the United States, in accordance with Article IX of this Agreement, at such time as the Spanish Government desires to prepare for the inauguration of service by a Spanish air carrier.

(b) Subject to the conditions set forth in this Agreement, the terms of the permits to be issued by each contracting party in favor of the air transport enterprise or enterprises designated by the other contracting party, the technical aspects of the operation, and other appropriate details of the conduct of the air transport services covered by this Agreement, shall be determined by direct consultation between the aeronautical authorities of each contracting party wherever feasible. Matters outside the scope of the aforementioned categories shall be dealt with as provided in Article IX of this Agreement.

(c) Aircraft of one contracting party using the public airports of the other contracting party, under any conditions permitted by this Agreement, shall also be entitled to use these airports, and all air navigation facilities available to civil traffic, on a national and most-favored-nation basis.

## ARTICLE II

(a) Each contracting party will designate its own air carrier enterprise or enterprises which are to operate the services for which rights have been granted, pursuant to Article I (a) of this Agreement. Each party may authorize one or more of its air carriers to operate the service over each of the routes for which rights are granted to said party in conformity with Article I

(a). Any permit issued by either party to an air carrier enterprise of the other party, in accordance with the terms of this Agreement, will be valid only so long as the holder of the permit is authorized by its own government to operate the services covered by such permit.

(b) The contracting parties may, at any time, freely replace their respective air carrier enterprises designated for the operation of the services in accordance with section (a) of this article, the newly designated air carrier succeeding to all the rights and obligations of the air carrier which it replaces. Under no circumstances will a change of designated air carrier by one contracting party justify the replaced air carrier in petitioning for indemnity of any kind from, or exercising judicial action of any type against, the other contracting party.

(c) Each of the contracting parties reserves the right to withhold the granting of a certificate or permit to an air carrier enterprise of the other contracting party in any case where it appears that substantial ownership or control is vested in nationals of a third country. When it appears that substantial ownership or control of an air carrier enterprise of either party holding a certificate or permit issued by the other party is vested in nationals of a third country, the party issuing such certificate or permit may revoke it or make it subject to conditions or limitations; provided that revocation shall not be ordered nor conditions or limitations imposed without prior consultation with the other party.

(d) At least two weeks before beginning to operate the services which are the object of this Agreement, the carrier or carriers designated by either contracting party will notify the competent authorities of the other contracting party of the schedules, tariffs, general terms of carriage and type of aircraft which it is proposed to use. Similar notification will be given whenever the above-mentioned data are to be modified.

### ARTICLE III <sup>7</sup>

The certificates of airworthiness, certificates of competency or licenses issued or rendered valid by one of the contracting parties for the aircraft and crews which are to effect the services of the lines covered by the present Agreement will be valid in the territory of the other contracting party.

### ARTICLE IV

On the basis of most-favored-nation treatment, each of the contracting parties agrees not to impose, and to use its best efforts to prevent the imposition of, any restrictions or limitations as to use of airports and airways, connections with other transportation services, or pertinent facilities in general

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<sup>7</sup> For an amendment of art. III, see agreement of July 4, 1950 (1 UST 732; TIAS 2140).

to be utilized within its territory, which might be competitively or otherwise disadvantageous to the air carrier enterprises of the other party.

#### ARTICLE V

(a) The importation or exportation of fuels, lubricants, spare parts, motors, equipment and material in general intended for exclusive use by aircraft of, or for operations by the air carrier enterprises of, both contracting parties will be effected on the basis of most-favored-nation treatment with respect to the payment of customs duties, inspection fees and other taxes and charges.

(b) The fuel and lubricants, as well as the legitimate equipment and stores on board the aircraft of either of the contracting parties arriving in and departing from the territory of the other contracting party, shall be exempt from customs duties or charges, even when the mentioned fuel, lubricants, equipment and stores aboard are used by the aircraft on a flight in that territory.

#### ARTICLE VI<sup>8</sup>

The commercial air traffic between two points under the national sovereignty or jurisdiction of one of the two contracting parties is exclusively reserved to the party which exercises said sovereignty or jurisdiction. Each of the contracting parties shall be entitled to most-favored-nation treatment with respect to the carriage of such traffic in the territory of the other contracting party. For purposes of this Agreement, national sovereignty or jurisdiction is understood to mean the national metropolitan territory and outlying territories, possessions and colonies, and the territorial waters adjacent thereto.

#### ARTICLE VII

The rights conceded by either contracting party to the air carrier enterprises of the other contracting party shall be subject to compliance with all applicable laws of the issuing government and all valid rules, regulations and orders issued thereunder, including air traffic rules and customs and immigration requirements applicable to all foreign aircraft.

Any restrictions or prohibitions against flight over prohibited areas shall apply to the commercial aircraft of both parties.

#### ARTICLE VIII

Offenses committed in the territory of one of the contracting parties by the personnel of the designated air carrier enterprises of the other contracting party shall be reported to the competent authorities of such other contracting party by the party in whose territory the offense was committed. If the offense is of a serious character the competent authorities will have the right to request the withdrawal of the offending employee or employees of the designated air carrier enterprise. In case of a definite repetition of an offense, the withdrawal of the designated air carrier enterprise may be requested.

<sup>8</sup> For an understanding relating to art. VI, see exchange of notes, p. 698.

## ARTICLE IX

In case either of the contracting parties considers it desirable to revise any of the routes set forth in Article I, it may request a consultation between the competent authorities of both contracting parties; such consultation shall begin within a period of sixty days from the date of the request. In case the aforementioned authorities mutually agree on new or revised conditions affecting Article I of this Agreement, their recommendations on the matter will come into effect after they have been confirmed by a protocol or an exchange of diplomatic notes.

## ARTICLE X

(a) This Agreement shall come into force on December 2, 1944 and shall remain in force until it is terminated in accordance with the procedure established in paragraph (b) of this Article.

(b) Either of the contracting parties may, at any time, give notice in writing to the other contracting party of its desire to terminate this Agreement. Such notice of termination may be given by either party to the other party only after consultation between both parties for a period of at least ninety days. The termination shall be effective after three months from the date on which the said notice is given by one of the parties to the other.<sup>9</sup>

I shall be glad to have you inform me whether it is the understanding of your Government that the terms of the Agreement reached as the result of the negotiations are as above set forth. If so it is suggested that the Agreement become effective on December 2, 1944; if your Government concurs in this proposal the Government of the United States will regard it as becoming effective on that date.

I avail myself of this occasion to renew to Your Excellency the assurances of my highest consideration.

CARLTON J. H. HAYES

His Excellency

JOSÉ FÉLIX LEQUERICA Y ERQUIZA  
*Minister of Foreign Affairs*  
*Madrid*

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*The Minister of Foreign Affairs to the American Ambassador*

[TRANSLATION]

MADRID, *December 2, 1944*

MR. AMBASSADOR:

I have the honor to acknowledge the receipt of Your Excellency's note of today's date in which you communicate to me the terms of an agreement on air transport between the Spanish Government and the Government of the

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<sup>9</sup> For additional arts. XI and XII, agreement of July 4, 1950 (1 UST 732; TIAS 2140).

United States of America, which has been agreed to in the negotiations now concluded between both Governments.

The terms of said agreement which Your Excellency has communicated to me are the following:

[For terms of agreement, see U.S. note, above.]

I have instructions to inform Your Excellency that my Government accepts the terms of the agreement in the form in which they have been communicated to me, and likewise that it agrees to Your Excellency's proposal that said agreement enter into effect December 2, considering it therefore as being in force from the indicated date.

I avail myself of this opportunity, Mr. Ambassador, to reiterate to Your Excellency the assurances of my high consideration.

JOSÉ F. DE LEQUERICA

His Excellency

CARLTON JOSEPH HUNTLEY HAYES

*Ambassador of the United States of America in Madrid*

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*The Minister of Foreign Affairs to the American Ambassador*

[TRANSLATION]

MADRID, *December 2, 1944*

MR. AMBASSADOR:

With respect to the agreement signed on this date and in particular to article VI thereof, I have the honor to advise Your Excellency that the Spanish Government understands the application of the most-favored-nation clause—insofar as it refers to commercial air traffic between two points under the national sovereignty or jurisdiction of either of the contracting parties—as having to be the object in each case of a special agreement.

It is understood that the stipulations with respect to most-favored-nation treatment established in the present agreement include the right of each of the parties to said most-favored-nation treatment with respect to any other special agreement or concessions granted by either of the contracting parties to third parties.

It is further understood that the North American air line companies that operate in accordance with the present agreement will be authorized to maintain in Spain the North American personnel which may be necessary for administrative and technical purposes, subject to the previous consent of the Air Ministry.

I avail myself of this opportunity, Mr. Ambassador, to reiterate to Your Excellency the assurances of my high consideration.

JOSÉ F. DE LEQUERICA

His Excellency

CARLTON JOSEPH HUNTLEY HAYES

*Ambassador of the United States of America  
in Madrid*

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*The American Ambassador to the Minister of Foreign Affairs*

EMBASSY OF THE  
UNITED STATES OF AMERICA  
MADRID, *December 2, 1944*

No. 3483

EXCELLENCY:

I have the honor to confirm the understanding set forth in Your Excellency's Note of today's date to the effect that, with respect to the Agreement concluded this day, and particularly with respect to Article VI of that Agreement, the application of the most-favored-nation clause, in so far as it refers to commercial air traffic between two points under the national sovereignty or jurisdiction of each of the contracting parties, is to be the subject of a special agreement in each case.

It is also understood that the stipulations established in the present Agreement relative to most-favored-nation treatment include the right of each of the parties to the said most-favored-nation treatment in regard to any other special agreement or concessions granted by either contracting party to third parties.

It is further understood that the American airline companies which will operate under the present Agreement will be authorized to maintain in Spain such American personnel as may be necessary for administrative and technical purposes, subject to previous consent of the Air Ministry.

I avail myself of this occasion to renew to Your Excellency the assurances of my highest consideration.

CARLTON J. H. HAYES

His Excellency

JOSÉ FÉLIX DE LEQUERICA Y ERQUIZA

*Minister for Foreign Affairs*